

DAMON R. TALLEY, P.S.C.

112 N. LINCOLN BLVD.
P.O. BOX 150
HODGENVILLE, KENTUCKY 42748

TEL. (270) 358-3187
FAX (270) 358-9560

DAMON R. TALLEY

ATTORNEY AT LAW

March 14, 2006

Ms. Beth O'Donnell
Executive Director
Public Service Commission
PO Box 615
Frankfort, KY 40602

RECEIVED

MAR 14 2006

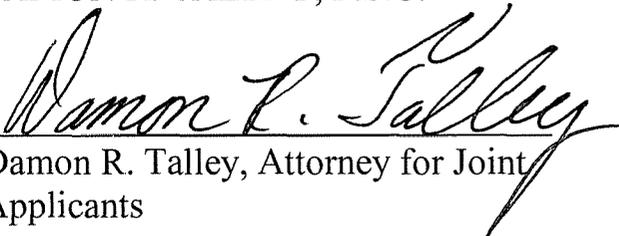
PUBLIC SERVICE
COMMISSION

RE: Case No. 2005-00433
Transfer Application
Proposed Transfer of Stock from
Nuon Global Solutions USA BV
to Hydro Star, LLC

Dear Ms. O'Donnell:

Enclosed for filing are the original and ten (10) copies of the Joint Applicants' Petition for Confidentiality.

Yours truly,
DAMON R. TALLEY, P.S.C.


Damon R. Talley, Attorney for Joint
Applicants

DRT:ms

Enclosures

cc: David Spenard, Attorney General's Office

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

THE JOINT APPLICATION OF)
NUON GLOBAL SOLUTIONS USA, BV,)
NUON GLOBAL SOLUTIONS USA, INC.,)
AIG HIGHSTAR CAPITAL II, LP,)
HYDRO STAR, LLC, UTILITIES, INC.)
AND WATER SERVICE CORPORATION)
OF KENTUCKY FOR APPROVAL OF AN)
INDIRECT CHANGE IN CONTROL OF A)
CERTAIN KENTUCKY UTILITY PURSUANT)
TO THE PROVISIONS OF KRS 278.020 (5))
AND (6) AND 807 KAR 5:001 (8))

CASE No. 2005-00433

*** **

PETITION FOR CONFIDENTIALITY

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Come the Joint Applicants, Nuon Global Solutions USA, B.V. (“Nuon BV”), Nuon Global Solutions USA, Inc. (“Nuon USA”), AIG Highstar Capital II LP (“Highstar”), Hydro Star, LLC (“Hydro Star”), Utilities, Inc. (“Utilities”) and Water Service Corporation Of Kentucky (“Water Service”), (the “Joint Applicants”), and petition the Commission, pursuant to 807 KAR 5:001, Section 7 and all other applicable law, for confidential treatment of certain information,

material and documents previously filed in this proceeding and in Case No. 2005-00323. For cause, the Joint Applicants state as follows:

1. The Joint Applicants request that the following information, material or documents be accorded confidential treatment:

- A. The amount of the purchase price;
- B. The Stock Purchase Agreement between Nuon BV and Hydro Star dated May 14, 2005. The Stock Purchase Agreement was appended as Exhibit 3 to the Application filed in Case No. 2005-00323;
- C. The Highstar Financial Statements and Supplemental Information for the period from May 18, 2004 (commencement of operations) to December 31, 2004. This information was filed as Exhibit 9 to the Response of the Joint Applicants to the First Data Request of Commission Staff in Case No. 2005-00323;
- D. The amount of the capital commitments from the Highstar partners (the “Committed Capital”); the percentage of these commitments that have been called; and the amount of the Committed Capital which remains available to call for purposes of satisfying investments, management fees and expenses; and
- E. The amount of the transaction costs related to the proposed stock purchase. (See the answer to question 19 of the Response of the Joint Applicants to the First Data Request of Commission Staff in Case No. 2005-00323).

2. Collectively, the information, material and documents set forth in paragraph one (1) of this Petition for Confidentiality shall be referred to as the “Confidential Material.”

3. KRS 61.872(1) requires information filed with the Commission to be available for public inspection unless specifically exempted by statute. The Confidential Material is exempt from public inspection and public disclosure under the provisions of KRS 61-878(1)(c)1 which provides as follows:

Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records;

4. The Joint Applicants were required by the relevant Kentucky statutes and administrative regulations to provide the Confidential Material to the Commission.

5. The Confidential Material contains information which is generally recognized as being confidential or proprietary. Public disclosure of the Confidential Material will provide an unfair, commercial advantage to the competitors of the Joint Applicants. This will result in a substantial competitive injury to the Joint Applicants.¹

6. The amount of the purchase price is highly confidential. The press release announcing the proposed stock transfer did not mention the amount of the purchase price.² Within the past few days, the Joint Applicants have made a

¹ See Case No. 95-098, The Application of Delta Natural Gas Company, Inc. for an Order Authorizing the Purchase and Financing of the Canada Mountain Gas Storage Field (Ky. PSC May 17, 1995) at 1-3.

² See Exhibit 30 of the Response of the Joint Applicants to the First Data Request of Commission Staff in Case No. 2005-00323.

diligent and exhaustive search of the information filed in the other states where regulatory approval was required. The purchase price was disclosed in only two (2) states: Kentucky and Pennsylvania. In both Kentucky and Pennsylvania, the Joint Applicants specifically requested the purchase price to remain confidential.

7. The Stock Purchase Agreement should also be accorded confidential treatment. It contains both confidential and proprietary information including the purchase price, the payment terms, conditions precedent to the closing, employee benefit arrangements, termination fee and many other sensitive provisions. If a business competitor gained access to the Stock Purchase Agreement, that competitor would clearly gain an unfair commercial advantage. After an exhaustive search, the Joint Applicants have determined that the Stock Purchase Agreement was not filed in any jurisdiction except Kentucky.

8. The Joint Applicants filed the Stock Purchase Agreement as Exhibit 3 to their Application and requested that the Agreement be accorded confidential treatment. The Joint Applicants stated:

A copy of the Agreement is attached as Exhibit 3. The Agreement contains trade secrets or confidential commercial or financial information and, accordingly, is being submitted to the Commission as proprietary information. Joint Applicants respectfully request that the Agreement be retained by the Commission as proprietary information.³

³ See Application filed on August 3, 2005 in Case No. 2005-00323, paragraph 11 at page 5.

9. In prior cases, the Commission has accorded confidential treatment to asset purchase agreements and ordered that the agreements be withheld from public inspection and disclosure.⁴

10. The Highstar Financial Statements should also be accorded confidential treatment. Highstar is a private, limited partnership. It is not a publicly owned company. As such, its Financial Statements are not publicly disclosed. Highstar has not knowingly provided its Financial Statements to any other state where regulatory approval is being sought unless the Financial Statements were accorded confidential treatment or were otherwise kept from being publicly disclosed.

11. To the extent that it is impossible or impractical for the Joint Applicants to comply with all the provisions of 807 KAR 5:001, Section 7 because the Confidential Material identified in this Petition has already been placed in the public record in this case, the Joint Applicants move for a deviation, pursuant to 807 KAR 5:001, Section 14, from those provisions of Section 7.

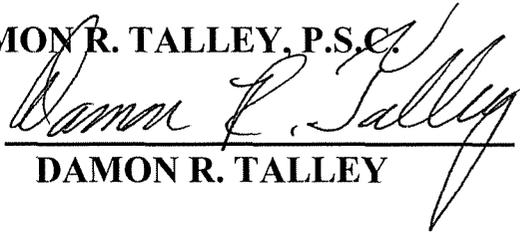
⁴ See Case No. 91-247, *The Application of First Kentucky Cellular Corp. for the Issuance of a Certificate of Public Convenience and Necessity* (Ky. PSC November 8, 1991) at 3.

See Case No. 91-458, *The Joint Application of Contel Cellular of Louisville, Inc. and Rural Cellular Communications, Inc. for Approval of the Transfer and Acquisition of Cellular Telephone Assts* (Ky. PSC January 9, 1992) at 3-4.

WHEREFORE, the Joint Applicants respectfully petition the Commission to treat and protect as confidential all of the Confidential Material identified in this Petition; to remove the Confidential Material from the public record; to withdraw from its website the electronic version of the Confidential Material identified in this Petition and filed in Case No. 2005-00323 or in Case No. 2005-00433; and to grant all other appropriate relief.

Respectfully submitted this 14th day of March, 2006.

DAMON R. TALLEY, P.S.C.

BY: 

DAMON R. TALLEY

DAMON R. TALLEY, P.S.C.

PO BOX 150

HODGENVILLE, KY 42748

270-358-3187 FAX: 270-358-9560

COUNSEL FOR NUON BV, NUON USA,

HIGHSTAR, HYDRO STAR,

UTILITIES, INC. AND WATER

SERVICE

drtalley@alltel.net

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing pleading was served by first class U.S. Mail, postage prepaid this 14th day of March, 2006 to the following:

Honorable David E. Spenard
Assistant Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601-8204



DAMON R. TALLEY